

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CERTAIN UNDERWRITERS AT LLOYD’S
LONDON, subscribing to the policy attached
to Certificate no. BP/15-0489,

Plaintiff,

ORDER ADOPTING R&R

-against-
EBE OF NY, INC., doing business as Vapor
Smoke Shop and JAMES WRENN,

16-CV-6938(DRH)(ARL)

Defendants.

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Presently before the Court is the Report and Recommendation of Magistrate Judge Arlene R. Lindsay, dated June 20, 2018, (“R&R”), recommending the motions of plaintiff Certain Underwriters at Lloyd’s London, subscribing to the policy attached to Certificate no. BP/15-0489 (“Underwriters”) (1) for a default judgment against defendant EBE of NY, Inc. (“EBE”) and (2) for summary judgment against defendant James Wrenn (“Wrenn”), be granted. More than fourteen days have elapsed since service of the R&R and no objections have been filed by Defendants.

Pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, this Court has reviewed the Report and Recommendation for clear error.

Both motions seeks the following relief:

an Order declaring that there is no coverage under Underwriters’ policy for Wrenn’s claim in the underlying action, and that Underwriters are not under a duty to defend or indemnify EBE or any other party with respect to the underlying action; awarding Underwriters the costs of suit incurred herein, including reasonable attorneys’ fees”

(Underwriters’ Mem. in Supp. of Default Judgment (DE 14-14) at 15; Underwriters’ Mem. in

Supp. of Summary Judgment (DE22-14) at 16.)

While Underwriters' motion papers and the R&R address the issue of coverage and lack of a duty to defend and/or indemnify, neither the motion papers nor the R&R address the propriety of awarding attorney's fees. Accordingly, the request for reasonable attorneys' fees is denied as abandoned. In all other respects, Judge Lindsay's R&R is adopted. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motions for a default judgement against defendant EBE of NY, Inc. and for summary judgment against defendant James Wrenn declaring there is no coverage are granted. The Clerk of Court is directed to enter judgment declaring that there is no coverage under Underwriters' policy for Wrenn's claim in the action currently pending in New York State Supreme Court, Nassau County, styled James Wrenn v. "ABC Corp" d/b/a Vapor Smoke Shop, and bearing Index No.: 601450/2016 (the "Underlying Action"), and that Underwriters are not under a duty to defend or indemnify EBE or any other party with respect to the Underlying Action.

SO ORDERED.

Dated: Central Islip, N.Y.
July 11, 2018

/s/ Denis R. Hurley
Denis R. Hurley
United States District Judge